IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.462 OF 2003

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M.S.Shah and ors. ...Petitioners

v/s.

Sushila K. Ghanekar ...Respondent

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Mr.Uday Bobde i/b Chitnis Vaity & Co. for the Petitioners.

Mr.P.R.Arjunwadkar i/b Mr.Milind D. Parab for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 21ST MARCH,2005

P.C.:

1. By this petition the Petitioner challenges the award made by the sole arbitrator. There is an agreement between the parties by which the Petitioner promised the Respondent to provide accommodation in the newly constructed building for residence and business and also payment of money was to be made. Claims and counter-claims were made by both the parties. According to the Respondent, the Petitioner had committed breach of the agreement. According to the Petitioner, however, the agreement was in force and the Respondent was entitled to specific performance of the agreement. The learned Arbitrator on the basis of the material produced before him has held that though there was a specific obligation cast on the Petitioner to provide temporary alternate accommodation, at no point of time, the temporary alternate accommodation was offered. The learned Arbitrator has found that the obligation to pay taxes and water charges was on the Petitioner/Builder, but it is the Respondent who is paying the taxes and water charges all along. The learned arbitrator has

also held that the agreement was of the year 1993. On the basis of material available on record, the learned Arbitrator has held that the agreement should have been fulfilled by the Petitioner/builder within a reasonable time and the reasonable time would have been of two years. The arbitrator has found that till the award was made the Petitioner was in no position to hand over the accommodation and therefore the learned arbitrator has held that the Petitioner/builder has committed breach of the agreement. There is no valid and subsisting agreement in force and therefore there is no question of granting specific performance of that agreement.

2. The learned counsel appearing for the Petitioner/builder submitted before me that under the agreement the Respondent was supposed to vacate the portion of the premises which was occupied by her and her brother, but she never vacated the portion of the premises. It was also contended that there was no question of providing any temporary alternate accommodation as the Petitioner did not need the portion of the plot occupied by the Respondent for construction. It was also argued that as the Petitioner is in a position to give the possession of

permanent accommodation, there is no question of any breach being committed in not providing the temporary alternate accommodation. It was also argued that so far as non-payment of water charges and taxes are concerned, demand was not made by the Respondent on the Petitioner. It was further urged that there was no question of the Petitioner handing over possession of accommodation within two years because the Respondent never vacated the portion occupied by her. It was further urged that the finding recorded by the arbitrator that because the agreement was not properly stamped, it is not admissible in evidence is wrong. I find that no fault can be found with the finding because the finding are recorded on the basis material available on record before the arbitrator. The learned arbitrator has given elaborate reasons for recording the findings. Perusal of clause 7 of the agreement between the parties shows that there was a clear obligation cast on the Petitioner/builder to provide temporary alternate accommodation. The learned arbitrator on the basis of material available on record has held that at no point of time the Petitioner offered temporary alternate accommodation to the Respondent and therefore there was no question of her vacating the portion of the plot occupied by

her. I find that in one breath the Petitioner says that he could not complete the project within time because the Respondent did not vacate the portion of the plot occupied by her and her brother and on the other hand he says that he was not obliged to provide the temporary alternate accommodation, because he did not need the portion of the premises occupied by the Respondent for carrying on construction. It is further to be seen here that in the agreement there is a clear recital that the Petitioner would give to the Respondent one flat of 650 sq.ft. (built up area) and other flat of 250 sq.ft. (built up area) and two shops premises having built up area of 100 sq.ft. The agreement does not provide as to on what floor of the building these flats and shops will be given. Therefore, the Petitioner was under an obligation to supply a copy of the sanctioned building plan to the Respondent, so that she could know where she would be getting the accommodation. But at no point of time the copy of the sanctioned building plan was ever made available to the Respondent. The learned Counsel for the Petitioner submits that because there is no clause in the agreement casting the obligation on the Petitioner to supply a copy of the sanctioned building plan to the

Respondent, no fault can be found with the conduct of the Petitioner. In my opinion, the argument is without substance. The agreement contemplates handing over of shops and flats by the Petitioner to the Respondent. The agreement does not specify the floor of the building on which the shops and flats are to be provided. Therefore, there was an implied obligation on the Petitioner to supply a copy of the building plan to the Respondent. From the conduct of the Petitioner of not supplying the building plan to the Respondent, it is clear that the arbitrator is justified in drawing adverse inference against the Petitioner for not supplying copy of the building plan. The agreement was entered into in the year 1993. Twelve years' period has expired and even today, admittedly, the Petitioner is not in a position to hand over possession of shops to the Respondent. In these circumstances, therefore, in my opinion, no fault can be found with the finding of the learned arbitrator that the Petitioner has committed breach of the obligations cast on him by the agreement by not offering alternate accommodation to the Respondent within a reasonable period.

3. Taking overall view of the matter, therefore, in

my opinion, the findings that have been recorded by the learned arbitrator are based on appreciation of material available on record and the findings are possible findings to be reached on the material available on record and therefore considering the extremely limited jurisdiction of the Court under section 34 to interfere with the findings recorded by the arbitrator, the award cannot be disturbed. Petition, therefore, fails and is dismissed. The Petitioner is directed to pay costs of the Respondent as incurred by the Respondent.

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